

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00318/2012

Dated the 06th day of December Two Thousand Eighteen

PRESENT

**HON'BLE MR. P. MADHAVAN, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)**

G.Sukumaran,
S/o. Govinda Panickar,
No. 15-238, Christopher Colony,
Arumainathan Road,
Nagercoil 629003,
Kanyakumari District.

....Applicant

By Advocate M/s. J.Anandavalli

Vs

- 1.The Secretary,
Department of Telecommunication,
Sanchar Bhavan,
No. 20, Ashoka Road,
New Delhi.
- 2.The Chief General Manager,
Telecommunications,
Bharat Sanchar Nigam Limited,
No. 80, Anna Salai,
Chennai 600002.
- 3.The Principal Controller of
Communication (Accounts),
Tamil Nadu Circle,
IV Floor, CGM,
TN Circle Complex,
No. 80, Anna Salai,
Chennai 600002.
- 4.The General Manager,
Telecommunications,
Court Road,
Nagercoil 629001,
Kanyakumari District.

5.The Chief Manager,
 Syndicate Bank,
 WCC Road,
 Nagercoil 629001,
 \ Kanyakumari District.

....Respondents

By Advocates Ms. Shakila Anand (R1 & R3)
 Dr. D. Simon (R2 & R4)

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

“To call for the records pertaining to the impugned order of the 3rd respondent vifde proceedings No. PCCA/TN/Pen Rev/2011, dated 28.07.2011 and quash the same in so far as the order of recovery and withdrawal of family pension and dearness allowance is concerned and direct the respondents to pay the re-fixed pension amount and other retirement benefits within a time fixed by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

2. The facts of the case as stated by the applicant are as follows:

The applicant was initially recruited as Engineering Supervisor in the year 1972 by the Tamil Nadu Telecom Circle. The applicant underwent training for 10 months from 06.08.1973 to 05.06.1974. He was transferred to Nagercoil. While working at Nagercoil he was sent on deputation to Telecommunication Consultants India Limited (TCIL) on 10.07.1989. With effect from 19.11.1990, he was promoted to Group B cadre of Telecommunication Engineering Service (TES). He was absorbed in TCIL w.e.f 10.07.1994. On his absorption in TCIL, he was asked to submit his technical resignation and the same was accepted by the 1st respondent on 23.10.1998. The applicant retired as Deputy Manager TCIL on 30.04.2007 on attaining the age of superannuation. Since the pensionary

benefits were not fixed properly taking into account the training period etc , the applicant had filed OA 808 of 2011 before this Tribunal for refixation of the pension in accordance with 6th Pay Commission. During the pendency of the said OA, the 2nd respondent has passed the present impugned order dt. 28.07.2011 and hence this Tribunal dismissed the OA as the relief of refixation had already been carried out. The impugned order dt. 28.07.2011 has included the training period while revising the pensionary benefits payable to the applicant. It speaks about dearness relief being given erroneously to the applicant from 10.07.1994 to 30.04.2007, which being the tenure of the employment in TCIL. The applicant would submit that the amount arrived at viz, Rs. 1,30,850/- is without any calculation and has been done in a summary manner. The rule cited by the respondents particularly Rule No. 55A of CCS Pension Rules, 1970 clearly reveals that the same cannot be applied to the applicant. The rule clearly suggests that dearness allowance is not payable only when a pensioner is reemployed. Therefore, the respondents cannot be allowed to improvise or to interpret new meaning to the Rules to sustain the illegal impugned order. The impugned order directing the Branch Manager to work out the money payable to the applicant and the illegal deduction thereof, which itself shows the vagueness and illegality in the impugned order. The applicant is entitled to revised pension without any deduction and the impugned order is liable to be set aside on the various grounds raised in the OA and the OA has to be allowed.

3. The 1st and 3rd respondents filed reply. The respondents would submit that vide communication dt. 23.11.2005, the pension of the applicant was revised. In the same communication dt. 23.11.2005, it was stated that there was over payment of commuted value of pension and it was ordered that the excess payment may be recovered from the applicant's pension payable. While authorising the pension, it has been noticed by the 3rd respondent office that DR was erroneously allowed as admissible from time to time to the pensioner for which he is not entitled upto his employment in TCIL ie, upto 30.04.2007 as re-employed pensioners whose pay were fixed to a stage above the minimum of their scale of pay are not entitled to DR vide GID 4 (II) a (iii) under Rule 55 (A) of CCS (Pension) Rules. In the meantime, the pensioner made an application vide OA 808 of 2011 before the CAT, Madras Bench praying for the revision of pension by taking into account the training period for pension and then refix it with reference to VI Pay Commission. The 3rd respondent's office has revised the retired officer's pension with reference to VI Pay Commission with the request to deduct the overpayment made due to the erroneous payment of Dearness Relief. The pensioner was intimated about the overpayment of DR on 28.03.2011. It is submitted that the letter dated 07.11.2008, details about the excess paid amount of Commuted value of Pension of Rs. 44,514/- the amount is not ordered to be recovered as the commuted pension is to be restored w.e.f 26.11.2013 ie, after completion of 15 years of payment of commuted value of pension. The amount of Rs. 1,30,850/- shown in the order dated 28.07.2011 is

the Dearness Relief paid for the period from 10.07.1994 to 30.04.2007 to which the pensioner is not entitled as per GID No. 4(11) a(iii) under Rule 55A of CCS Pension Rules 1972. Further, respondent would submit that the original pension payment order issued by Nagercoil, family pension was not authorised. The authorisation for family pension, to the wife of Shri. Sukumaran in the event of his death has since been issued. As per GID No. 4(11) a(iii) under Rule 55A of CCS Pension Rules, 1972, the Dearness Allowance was not entitled.

4. The respondents 2 and 4 also filed the reply. The respondents would submit that the revision of pension including the training period was done by the 4th respondent and the revised calculation was forwarded to the 3rd respondent to issued necessary orders as they are competent authority to issue the orders. The applicant was also informed by issuing copy of the same. The contention of the applicant that the that the excess amount not to be recovered since 6 years have been passed is not acceptable. The excess amount was already received by him. Hence, he is liable to repay the amount to the Government of India as the amount was paid from the Government Exchequer. This issue has been set right as the Commutation has already been restored from 26.11.2013.

5. Written arguments were filed by the learned counsels for the respondents and the applicant.

6. We have carefully considered the relevant material and the rival submissions.

7. Shri. G. Sukumaran retired from DOT, TN Circle, Nagercoil for

permanent absorption to TCIL w.e.f 10.07.1994. He requested to include one year training period for the purpose of qualifying service thereby revising the pension payable for his Government Service. At the time of issuing original pension payment order, the training period could not be taken into the account for qualifying service due to non-availability of the entries in the account for qualifying service in the Service Book. Once the entry has been furnished revision of pension was effected. It was found while doing revision that there occurred some excess payment of commutation value of Rs. 99812/- and out of which a recovery was made for Rs. 55298/- and the balance of Rs. 44514/- is not ordered to be recovered as the commuted pension was restored w.e.f 26.11.2013 ie, after completion of 15 years of payment of commuted value of pension. During the period of employment at TCIL, the pensioner was getting Dearness Relief for his pension till 20.04.2007. During his re-employment in TCIL, the pensioner was fixed the pay in the stage above the minimum of the Pay Scale and hence not entitled the Dearness Relief in terms of GID No. 4(II), a(iii) under Rule 55A of CCS Pension Rules, 1972. The resultant over payment of Dearness Relief for the period from 10.07.1994 to 30.04.2007 (the pensioner retired from TCIL on 30.04.2007) amounting to Rs. 1,30,850/- has been ordered to be recovered in the arrears of pension to be paid to the pensioner. Recovery of Rs. 130850/- is again justified since amount represented DR to which the applicant is not entitled as per rules. The pensioner is drawing correct quantum of pension with Dearness Relief at present.

8. In view of the above discussion we are of the view that nothing survives in this OA and the same is liable to be dismissed. Accordingly, the OA is dismissed.

9. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.12.2018

SKSI